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File No. 042990-0031

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VIA EMAIL & U.S. MAIL

Frances Zizila, Esq.
U.S. Environmental Protection Agency
Office of Regional Counsel, Region 2
290 Broadway
New York, New York 10007-1866

Re: Apogent Technologies' Response to General Notice Letter

Dear Frances:

The Cooperating Parties for the Standard Chlorine Chemical Company Site ("Site") (*i.e.*, Beazer East, Cooper Industries, and Tierra Solutions on behalf of Occidental Chemical Corporation, collectively, the "Group") have received a copy of the letter, dated January 25, 2012 [sic], from J. Forrest Jones, counsel for three recipients of General Notice Letters from EPA – Thermo Fisher Scientific, Inc., Apogent Transition Corp. and Apogent Technologies, Inc. (collectively, the "Thermo PRPs") (the "Thermo Letter"). While we do not wish to belabor the points that we have previously made to the EPA with respect to the liability of the Thermo PRPs, we would like to take this opportunity to clarify the record on our efforts to date to engage the Thermo PRPs and, in addition, to respond to the most egregious issues and arguments raised by the Thermo Letter.

A. Discussions Between Cooperating Parties and the Thermo PRPs

As an initial matter, we believe that the Group should afford EPA full transparency on the lengths we have taken to involve all the noticed PRPs, including the Thermo PRPs, in the investigation and remediation of the Site. Our Group first reached out to the Thermo PRPs on December 22, 2010, after EPA advised the Group that the Thermo PRPs had retained Forrest Jones as counsel to respond to EPA's 104(e) request to Thermo Fisher. Gary Gengel (Cooper Industries) had a lengthy phone call with Forrest Jones to provide a summary of the Site's history and current status, as well as an update on the status of negotiations with EPA regarding the RI/FFS AOC, which, at that point, were still at an early stage. Over the course of the year following that call, our Group thoroughly considered the Thermo PRPs' March 7, 2011 response to EPA's 104(e) request, and then submitted to EPA on July 21, 2011 a detailed technical rebuttal to the 104(e) response.

Then, on April 4, 2012, Gary again called Forrest to share the comments our Group had just submitted to EPA on the draft RI/FFS AOC and SOW. Gary also transmitted to Forrest our Group's position that, given the small number of parties involved with the Site and the fact that the bulk of the Site contamination is connected to the defunct Standard Chlorine's operations, we would not sign the AOC without the participation of the Thermo PRPs. To encourage the Thermo PRPs to meet with us to discuss joining our Group, on April 11, 2012 we sent a copy of the agreement governing our internal relations (the "PRP Agreement"), with only the provisions related to each party's interim share redacted.

Following that call, the Thermo PRPs declined our invitation to meet to discuss their participation in our Group and finalization of the AOC. Fearing an impasse, the Group requested the then-EPA attorney for the Site, Leena Raut, to invite Forrest to a meeting between our Group and EPA to discuss final changes to the AOC. Forrest accepted Ms. Raut's invitation, agreeing to attend as an "observer." At the June 5, 2012 meeting with EPA and the Thermo PRPs, our Group informed Ms. Raut of the poor state of negotiations with the Thermo PRPs – in particular, their refusal to meet with us – and requested that she ask Forrest to commit to a separate meeting with our Group, which she was able to do.

However, while Forrest then agreed to Ms. Raut's request that he meet with us, due in part to the discovery of two conflicts issues between Forrest's firm and members of our Group, we were not able to meet with Forrest until nearly four months later, on September 24, 2012. At that meeting, our Group gave a detailed presentation on the extensive investigative and remedial work done at the Site by us to date, and proposed a path forward whereby allocation issues would be deferred for a short period in favor of all parties working together to obtain an expeditious final remedy for the Site. While we cannot divulge any settlement confidential particulars of our discussions, we can say that the Thermo PRPs did not agree to work with us in any way and, to our knowledge, have not agreed to sign the AOC for the RI/FFS or participate in any way in that effort.

B. PRP Agreement for the Cooperating Parties Group

As outlined above, our Group has diligently attempted to engage the Thermo PRPs and bring them into a cooperative working relationship on fair terms. As further evidence, we are including with this letter the same copy of the PRP Agreement we shared with the Thermo PRPs almost one year ago – complete except for the redacted interim share provisions. We share this information with EPA so that it is clear that the current impasse is not of our choosing and that we have striven, both in our relations with the Thermo PRPs and our relations with each other, to adopt a framework that prioritizes achieving a speedy and successful closure of the Site. In particular, we would call EPA's attention to Section V, governing the final allocation process among the parties.

After much negotiation at the initial creation of our Group, we designed the final allocation process so that it would have the following features:

1. It is ***timely***. Final allocation is scheduled to begin in May of this year – a date chosen to allow our Group to focus on completing the Interim Remedial Action work, establishing a working relationship amongst ourselves, and moving the RI/FFS process forward before diverting our resources and attention to allocation issues. (*see* V.B)
2. It is ***efficient***. The final allocation process provides for all the parties to exchange information in stages, until resolution is reached. The process starts with detailed questionnaires, then moves onto witness interviews and document discovery only if necessary, and finally calls for the use of trained professional mediators where informal negotiation is not successful. This process is in marked contrast to the exchange of technical submittals made with the Thermo PRPs to date, which are not being done with the benefit of full and mutual discovery. (*see* V.D.1-4)
3. It is ***expeditious***. Every stage of the final allocation process has a clearly-defined period of time, such that, at its longest, the entire process should take place over the course of one year. (*see* V.D.1-4)
4. It is ***nonbinding***. We have agreed to conduct informal negotiations in the first instance, and only to employ the services of a professional mediator where informal negotiations are unsuccessful. However, at the end of the entire process, if agreement cannot be reached, each party reserves the right to commence a civil action to have a court of law determine, finally and forever, each party's respective liabilities. (*see* V.D.5)
5. It is ***fair***. The final allocation process allows all the parties to advance whatever arguments they might like regarding their liability and their equitable share, including the successorship, insolvency, degree of contribution and other arguments that the Thermo PRPs currently ask EPA to resolve. Moreover, if informal negotiation or mediation in our final allocation process achieves an agreement among the parties, the Agreement calls for the parties to make adjustment payments to each other, with any party having paid (during the interim period) greater than its final mediated share entitled to a compensation payment from the other parties to account for its interim overpayment. (*see* V.G) This clearly addresses the Thermo PRPs' purported concern of having to overpay if they join our Group.[1]

As we believe EPA will see through our sharing of this PRP Agreement, our Group is interested in a transparent process that brings this Site and any disputes between the parties to closure in the most cost-effective and environmentally expeditious manner

[1] It is also worth noting that members of the Group have been working together for some time to pursue remediation efforts at the Site – all at significant expense. It is because of those efforts that remediation of the Site is so advanced and the prospect of allocation so near. Indeed, for parties that have spent millions of dollars to address a Site whose conditions are driven largely by insolvent prior owners and recalcitrants, Thermo's stated concern of having to overpay is well understood. When compared to the long-term contributions of the Group, however, Thermo's short-term complaints do not ring true.

possible. We believe that joinder of the Thermo PRPs to our Group would benefit the Thermo PRPs, the members of our Group, EPA and Site closure. We have invited the Thermo PRPs to join our Group and participate in the allocation process detailed in the PRP Agreement. To date, the Thermo PRPs have rejected our overtures and have elected instead to engage in a process of letter-writing, delay and incomplete disclosure. As our below comments will make clear, our Group believes that the Thermo PRPs' approach is inefficient and counter-productive, with all parties spending money paying their lawyers to argue and counter-argue the facts and the law instead of spending money trying to remediate the Site.

C. The Thermo PRPs' Continued Refusal To Produce Documents

As for the Group's initial impression of the most recent Thermo Letter, we are – and we believe EPA should be – concerned with the continuing pattern of the Thermo PRPs of being less than forthcoming with respect to facts and documents which have a direct bearing on Apogent Technologies' liability. For example, despite several requests from EPA, it appears that the Thermo PRPs still refuse to produce, among other things, corporate tax returns, insurance policies, and other financial documents relevant to the inquiry into the relationship between Apogent Technologies and Apogent Transition. We are aware of no legal basis that permits a PRP to withhold such information from EPA or to avoid a compulsion order or civil penalties when the information has been requested by EPA under Section 104(e) of CERCLA but not disclosed.

Moreover, the Thermo PRPs have not produced a single piece of paper that identifies: (1) the activities carried on by either Apogent entity in, or immediately prior to, 1994; (2) the assets that were transferred in 1994; (3) the assets and/or liabilities ***not*** transferred; (4) the value of the transaction; (5) the financial relationship between the Apogent entities; (6) a full list of the management – overlapping or not – of the Apogent entities at the time of the relevant transactions; or (7) the considerations that went into the transfer. And yet ***this is exactly the kind of documentation that one would expect the Thermo PRPs to provide if, in fact, the 1994 transaction was entirely innocent.*** Instead, the Thermo PRPs provide only a one-page news article that includes self-serving quotes from the company's CEO, and expects the EPA to ignore all of the other evidence, as previously provided, supporting the conclusion that Apogent Technologies is also a responsible party.

D. The Liability of Apogent Technologies

The Thermo Letter concedes that Apogent Transition is a corporate successor to Tanatex Chemical Corporation ("Tanatex"), and thus a PRP liable for remediation at the Site. What is not conceded, although it is just as evident, is the liability of Apogent Technologies, Apogent Transition's immediate parent company. We do not deny the principle enunciated in *United States v. Bestfoods*, 524 U.S. 51 (S.Ct. 1998), that, in general, a parent is not liable for the debts of its subsidiaries. But even as acknowledged in *Bestfoods*, a parent will be liable where "the corporate form would otherwise be misused to

accomplish certain wrongful purposes, most notably fraud, on the shareholder's behalf.... Nothing in CERCLA purports to rewrite this well-settled rule, either." *Id.* at 62-64. And, indeed, a transfer of assets by dividend to a parent corporation which leaves the subsidiary insolvent is exactly the type of activity that may give rise to such liability. *Pfohl Bros. Landfill Site Steering Comm. v. Allied Waste Sys., Inc.*, 255 F. Supp. 2d 134, 174 (W.D.N.Y. 2003) (parent held liable as successor when subsidiary became insolvent upon distribution of assets to parent in the form of dividends).[2] Thus, although the Thermo PRPs would prefer to reduce the fact that the 1994 "dividend" of assets from Apogent Transition to Apogent Technologies was a fraud on Apogent Transition's creditors to a mere footnote in their letter, it is much more than that.

Indeed, their refutation that the 1994 transaction was not fraudulent is premised on the fact that they claim not to have known of any potential liability ***for this Site*** at the time the dividend was issued. But that fact (if it is even true) is not determinative. Rather, a transfer is fraudulent, ***even with respect to an obligation unknown at the time***, if (a) the transfer was fraudulent against ***any*** creditor, or (b) where there was ***no reasonably equivalent value given*** for the transfer and the remaining assets of the transferor were unreasonably small with respect to debts that might arise in the future. *See, e.g.*, N.J.S.A. 25:2-25.

Here, the Thermo PRPs admit that there was ***no*** value given for the dividend to Apogent Technologies and that, as a result, Apogent Transition was left with no assets other than insurance policies which, as we have previously pointed out, could not cover Apogent Transition's liabilities because the company would not be able to pay the self-insured retention.[3] And, importantly, the Thermo PRPs do not claim that they were unaware of ***any*** potential liabilities of Apogent Transition or Tanatex. They cannot make such a claim given that contamination had already been identified at at least one former Tanatex facility, in Wellford, South Carolina, ***prior to 1994.***[4] Thus, the conclusion that the 1994 transfer of all of Apogent Transition's assets to its parent Apogent Technologies was sufficiently fraudulent to render Apogent Technologies liable remains inescapable.

With respect to liability under the *de facto* merger or mere continuation theories, the arguments of the Thermo PRPs are similarly unavailing. Each of the cases cited by the

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[2] The Thermo PRPs' citation to *Marsh v. Rosenbloom*, 499 F.3d 165 (2nd Cir. 2007) for the opposite proposition is highly perplexing, as that case concerned the distribution of assets upon formal dissolution. Here, Apogent Transition did not observe or follow the statutory procedures for dissolution, which procedures provide protections to known and even unknown creditors - protections that EPA and the Cooperating Parties have been deprived of.

[3] It is important note that unlike a policy with a deductible instead of an SIR, satisfaction of the SIR is a prerequisite to access under the policy - an obligation Apogent Transition is wholly unable to meet.

[4] *See* 10K for Sybron Chemicals, Inc., dated Apr. 1, 1996, at p. 25 ("During 1995, 1994, and 1993, the Company spent approximately $10,000, $2,000, and $54,000, respectively, in measuring the extent of contamination at its Wellford, South Carolina facility.").

Thermo PRPs in this regard is entirely inapposite, as each of those cases dealt not with transfers between related entities, such as a subsidiary and a parent, but rather with arm's length transfers between unrelated business entities. *See Atchison, Topeka and Santa Fe Ry. Co. v. Brown & Bryant, Inc.*, 159 F.3d 258, 365 (3d Cir. 1998) (noting that "appraised value" was paid for assets); *Berg Chilling Systems, Inc. v. Hull Corp.*, 435 F.3d 455 (3d Cir. 2006) (sale to unrelated entity with no continuity of corporate management); *Hunt's Generator Committee v. Babcock & Wilcox Co.*, 863 F. Supp. 879 (E.D. Wis. 1994) (transferee was innocent purchaser for value). In direct contravention of Thermo's argument, these and similar cases make clear that where, as here, there is no arm's length transaction but merely transfers between companies with identical owners and identical management, after which the transferor ceases operations,[5] successor liability is appropriate. *Cf. United States v. Mexico Feed & Seed Co., Inc.*, 980 F.2d 478, 489-90 (8th Cir. 1992) (rejecting successor liability because "the asset purchase transaction was between two competitors, not a cozy deal where responsible parties merely changed the form of ownership yet in substance remained the same" and there was no evidence that only "'clean' assets were transferred while 'dirty' assets [were left] behind with an insufficient asset pool to cover any potential liability").

The contrast between what the Thermo PRPs argue and the actual facts is startling. The two parties to the 1994 asset transfer were parent and wholly-owned subsidiary. And Apogent Technologies so dominated Apogent Transition[6] that it was able to cause Apogent Transition to transfer all of its operating assets, not as part of a bargained-for exchange or cash sale, but rather as a dividend to its sole shareholder, Apogent Technologies. In other words, the parent so dominated the subsidiary that it forced the subsidiary to "give away" all of its assets. What was left in Apogent Transitions was nothing of value, unlike the case in *Berg Chilling Systems,* 435 F.3d at 470, cited by the Thermo PRPs, where the transferor continued to operate other business divisions.[7] It is exactly this type of improper

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[5] The Thermo PRPs contend that under Third Circuit law, based on the decision in *United States v. Gen. Battery Corp., Inc.*, 423 F.3d 294 (3d Cir. 2005), there can be no successor liability without formal dissolution of Apogent Transition. But the Thermo PRPs misstate or misunderstand the holding of *General Battery*. The *General Battery* court rejected the more liberal "continuity of enterprise" test primarily because it did not require continuity of ownership, not because it required formal corporate dissolution. *Gen. Battery Corp., Inc.*, 423 F.3d at 309. Moreover, and more importantly, in a more recent decision, the Third Circuit rejected a "bright line standard" in application of the *de facto* merger analysis, holding that no one factor is determinative. *Berg Chilling Systems,* 435 F.3d at 468-469.

[6] As we have previously pointed out, the Chairman of the Board and CEO of Apogent Technologies, Kenneth Yontz, was one of two directors of Apogent Transition. The other director of Apogent Transition, Dennis Brown, was the Vice President – Finance, Chief Financial Officer and Treasurer of Apogent Technologies. How much more entwined could this management be?

[7] Further, while the Thermo PRPs argue that *Berg Chilling Systems* stands for the proposition that a transferee may be a successor only if the transferee received business assets relating to the operations that gave rise to liability, this is clearly not the case. Rather, the *de facto* merger and business continuation theories were rejected in *Berg Chilling Systems* because – unlike with the Apogent entities – there was no continuity of management or ownership and, further, because the transferor, rather than winding down its operations, continued to operate its remaining business units. *Berg Chilling Systems,* 435

manipulation of the corporate form to remove assets from the reach of creditors that have universally been held to warrant the imposition of liability on a transferee/ parent corporation such as Apogent Technologies.

E. Conclusion

In short, while continuing to proclaim that the 1994 asset dividend which left Apogent Transition all but insolvent was entirely innocuous, the Thermo PRPs have declined to provide any supporting documentation for this assertion. Moreover, as discussed above, the case law cited by the Thermo PRPs is unavailing, providing no support for the proposition that one company can transfer essentially all of its assets to its parent, without any consideration, and not be considered to have *de facto* merged with that parent. To conclude otherwise would serve only to encourage future attempts by companies to escape responsibility for the actions of their predecessors by simply "paying a dividend" to their parent of every meaningful asset in their possession.

As outlined above, we think our PRP Agreement is a fair and reasonable approach which has served and will serve us well. And our PRP Agreement would have provided a more efficient and productive framework for achieving Site closure for all parties involved – the Cooperating Parties, Thermo PRPs and EPA – than the past year spent responding to the Thermo PRPs' posturing. Notwithstanding the many allocation arguments advanced to date by the Thermo PRPs, we would submit that each of these allocation arguments is appropriate only after a full exchange of information and before a neutral mediator, as provided for under our Agreement.

Given the very small number of remaining viable PRPs for this Site, it is critical that the Thermo PRPs contribute to the investigation and remediation of the Site – whether or not they join us in our nonbinding allocation process. Should they continue to prove recalcitrant, we respectfully urge EPA to hold them to account.

Sincerely,

Gary Gengel
of LATHAM & WATKINS LLP

Enclosure

F.3d at 469-470. Even the Thermo PRPs are not so brazen as to suggest that Apogent Transitions continued to operate business units after it had been stripped of all of its assets.

cc: Lori Mills, Esq. (Tierra Solutions/Occidental Chemical Corp.) (via email)
Chip McChesney, Esq. (Beazer East) (via email)
Davon Collins, Esq. (Cooper Industries) (via email)
Forrest Jones, Esq. (Thermo PRPs) (via email)

GROUP AGREEMENT – STANDARD CHLORINE CHEMICAL COMPANY SITE

This Group Agreement – Standard Chlorine Chemical Company Site (this "Agreement") is made as of this _____ day of _____, 2011 (the "Effective Date"), by and among those parties (hereinafter collectively the "Group" or the "Group Members," and each individually a "Group Member") whose authorized representatives have executed this Agreement below.

WHEREAS, the Group Members contemplate entering into and/or funding the work under an Administrative Settlement Agreement and Order on Consent For Remedial Investigation and Feasibility Study, In The Matter of the Standard Chlorine Chemical Company Superfund Site, CERCLA-__-_____-2011 ("AOC") with the United States Environmental Protection Agency ("EPA") with respect to the Standard Chlorine Chemical Company Superfund Site ("SCCC Site" or "Site") situated in the Town of Kearny, Hudson County, New Jersey; and

WHEREAS, each of the Group Members have agreed to fund: (a) those actions occurring after June 1, 2010 related to implementation of an Interim Response Action Workplan ("IRAW") that was approved by both the New Jersey Department of Environmental Protection ("NJDEP") and EPA; (b) the performance of a remedial investigation and feasibility study at the Site pursuant to the AOC; (c) the payment of certain governmental administrative and oversight costs at the Site related to the IRAW and the AOC; and (d) the performance or payment of other Site-related obligations, as required by or reasonably related to the IRAW and/or required by and in accordance with the AOC, but not including any Hackensack River investigation or study costs undertaken after June 1, 2010 unless upon the unanimous consent of all Group Members (collectively, all work, payments and other obligations under (a) through (d) above hereinafter designated as the "Work"); and

WHEREAS, without admitting any fact, responsibility, fault or liability in connection with the SCCC Site or otherwise, the Group Members desire to enter into this Agreement to (1) perform and fund the Work; (2) allocate among themselves, on an interim basis, the costs and payments of performing the Work; (3) allocate among themselves, on an interim basis, the costs of certain common legal, technical, administrative and other tasks incurred in connection with the Work; (4) cooperate among themselves in these efforts to preserve and protect common interests, confidentialities, and applicable privileges and immunities; and (5) establish a procedure and timeline for reaching a final allocation of response costs at the Site (as provided in Article V below).

NOW, THEREFORE, in consideration of the foregoing, the Group Members mutually agree as follows:

I. GROUP ACTIVITIES, COOPERATION & COMMUNICATIONS

A. The Group. Each of the undersigned Group Members hereby organize and constitute themselves as the SCCC Site Cooperating Group.

B. Activities and Scope. The terms of this Agreement shall control the manner and means by which the Group Members shall perform and fund the Work and conduct a Final Allocation (as that term is defined in Section V below), and in order to complete those functions, the Group shall have the authority to conduct, and to set forth requirements and establish procedures for conducting, the following activities:

1. organizing and conducting the Work;

2. organizing and conducting negotiations, discussions and consultations with EPA and any other Federal, State or local governmental agencies, including the NJDEP, in connection with the foregoing;

3. initiating and pursuing claims, including initiating and prosecuting lawsuit(s), against parties who did not participate in the AOC and who are believed to be legally liable for the performance of the Work, if and as agreed upon pursuant to this Agreement;

4. retaining common counsel, contractors and technical and other consultants, if and as agreed upon, pursuant to this Agreement;

5. raising and spending all reasonably necessary funds to implement these purposes;

6. establishing a financial account in a manner and at or with an institution acceptable to the Group (the "Fund");

7. authorizing assessments necessary to pay for certain costs to be incurred as authorized by this Agreement including, but not limited to, legal, technical, administrative and other costs;

8. conducting a final allocation to determine each Group Member's responsibility for payment of Site-related response costs; and

9. taking all actions necessary or appropriate to effectuate this Agreement.

C. Cooperation. The Group Members shall reasonably cooperate with each other to effectuate the purposes of this Agreement.

D. Communications. For purposes of this Agreement, any requirement that a communication be in writing may be satisfied by transmission of a hard copy or by electronic mail message (provided, however, that in the event that the sender of an electronic mail message learns that the message was not delivered to a recipient, the sender shall provide the recipient with a hard copy of the communication).

II. ORGANIZATION & PROCEDURES

A. Decision Making. Except as otherwise provided herein, Group Members shall act in accordance with the voting requirements set forth below.

1. Any matter under this Agreement may be decided by the Group in a meeting or by written ballots. The Group shall attempt in good faith to make decisions by consensus. Except as otherwise provided in this Agreement, any matter put to a vote shall be decided by a majority of the voting shares of the Group. The Group may hold meetings where less than a majority of the voting shares is present; provided, however, that any matters to be resolved in such a meeting must still be decided by a majority of the voting shares of the Group.

2. Regardless of the number of representatives any Group Member may have in attendance at a meeting, each Group Member shall have the right to vote only the value of such Group Member's vote pursuant to Subsection II.C below.

3. Electronic or paper ballots may be circulated by any Group Member, or oral balloting may be conducted in any meeting, to effect a vote on any matter raised by a Group Member and seconded by another Group Member (any matter also may be raised or seconded by paper or electronic communication to the Group).

4. The Group may, but shall not be required to, elect or appoint a chairperson to conduct meetings, distribute ballots, and otherwise manage Group activities.

B. Calls for, and Notice of, Meetings.

1. Group Members may authorize or direct actions under this Agreement only at meetings duly held and called for such purpose or by written ballots.

2. Meetings of the Group and of committees may be called for any purpose at any time by any two or more Group Members, may be held in person or by telephone conference, and may be held among less than a majority of the voting shares of the Group. Any Member unable to attend a meeting in person may attend by telephone.

3. Whenever feasible, written notice of the time, place and purpose of any meeting of the Group or of a committee shall be given to each Group Member at least five (5) days before the date of such meeting. In the event a meeting is called on less than five (5) days written notice, the Group Members calling the meeting shall make a reasonable effort to provide notice in fact to every Group Member.

C. Voting Power.

1. In any Group or committee meeting, each Member shall have the right to vote on any matter before the Group. The value of each Group Member's vote shall be equal to its proportional interim share of responsibility as set forth on Exhibit A attached hereto.

2. Any Group Member that has failed to pay an assessment for Shared Costs within sixty (60) days after receipt of a notice of assessment and such payment remains overdue at the time of a meeting shall be deemed a delinquent Group Member and, unless the unanimous vote of all non-delinquent Group Members allows a delinquent Group Member to vote at a meeting, any Group Member that is delinquent at the time of a Group or committee meeting shall not be entitled to vote at that meeting and its proportional share of the Group's collective vote shall not be counted for purposes of determining whether a quorum exists or whether a majority of voting shares has voted on any issue or motion addressed at such a meeting. Upon receipt of any delinquent Group Member's overdue assessment(s), said Group Member shall cease to be deemed delinquent.

3. Except as provided in this Subsection II.C.3, the Group has no power to vote on matters not addressed within the scope of this Agreement. Should it become necessary to vote on a matter not presently within the scope of this

Agreement, then: (a) the Agreement may be modified to include such matter or other matters in accordance with Subsection IX.E below; or (b) upon the unanimous consent of all Group Members, such matter beyond the scope of this Agreement may be voted on in accordance with the voting provisions of this Subsection II.C.

D. Voting by Proxy. A Group Member eligible to vote at a meeting may assign the right to exercise its voting rights to another Group Member eligible to vote at the meeting, but any said assignment must be in writing.

III. GROUP POWERS

A. Enumerated Powers of the Group. The powers, duties and responsibilities of the Group shall include:

1. selecting, retaining, and determining the scope of the activities of, and compensation to be paid to, any counsel, contractors or consultants retained for assistance in any matter, activity or Work authorized by this Agreement;

2. establishing committees and subcommittees to handle specific matters within the scope of this Agreement;

3. negotiating settlements with respect to matters arising under this Agreement;

4. electing a chairperson of the Group;

5. conducting Group business through the committees;

6. authorizing and issuing assessments for Shared Costs;

7. negotiating with EPA, NJDEP and any other governmental agencies, third parties, and other persons, entities or groups with respect to all issues arising out of the Site, and providing for the common defense against enforcement or other claims which may be asserted against the Group members for matters within the scope of this Agreement;

8. deciding whether litigation should be commenced against entities who are not Group Members, or whether enforcement action, including litigation, should be commenced against any Group Member for breach of this Agreement, or to enforce the terms hereof;

9. circulating to the Group draft substantive pleadings, motions, letters, technical reports, testing results, consultants' or contractors' reports, or other joint written submissions;

10. reviewing, approving and paying invoices for counsel, consultants and contractors; and

11. conducting all such other activities that are necessary and proper to carry out the purposes of this Agreement.

B. Common Counsel. The Group Members shall determine by vote whether to retain common counsel for the Group and, if common counsel is retained, the terms,

conditions and oversight of such retention. Nothing in this provision shall be deemed: (a) to require that the Group retain common counsel; (b) to limit, in any way, the right of any Group Member to retain its own counsel in this or any other matter; (c) to prospectively waive any claim of conflict of interest that any Group Member may have with respect to any selected common counsel or any counsel retained separately by any other Group Member; or (d) to establish that any counsel separately retained by one Group Member is in any way providing representation to any other Group Member.

C. Compensation of Group Members. The Group Members, and any individuals serving on any committee on behalf of any Group Member, shall serve as volunteers without compensation from the Group except where the Group has, in advance, agreed at a meeting of and pursuant to a vote of the Group to pay for services undertaken by one Group Member on behalf of the entire Group.

D. Committees. In order to carry out the purposes of this Agreement, the Group Members may, but are not obligated to, establish committees, including but not limited to executive or technical committees.

1. Any individual serving on any committee on behalf of any Group Member shall maintain the privileged nature and confidentiality of all communications and proceedings of such committee. Such obligation shall continue in the event that any such individual should leave the employment of a Group Member or cease to represent such Group Member.

2. Each committee shall elect one or more of its voting members to serve as a chairperson of the committee, and said chairperson shall moderate the activities of the committee and shall periodically communicate to the Group any committee decisions, actions or recommendations. Any voting member of a committee elected to serve as chairperson of such committee shall not have his or her right to vote enhanced or diluted by virtue of service as chairperson. An elected chairperson of a committee may resign at any time. An elected chairperson of a committee shall be replaced upon the committee's election of a replacement chairperson.

3. No decisions or actions of any committee shall bind the Group until ratified by a vote of the Group.

IV. COSTS & INTERIM ALLOCATION

A. Definition of Shared Costs. For purposes of this Agreement, the term "Shared Costs" shall include:

1. all costs that the Group may authorize be paid or budgeted for payment after the Effective Date of this Agreement for the purposes authorized by this Agreement including, without limitation, the costs of the Work, administrative costs, consultants' and contractors' charges, common counsel's charges (if any), litigation costs, testing and laboratory charges, costs of securing and maintaining financial assurance required under the AOC, and other similar costs;

2. all costs that Group Members Tierra Solutions, Inc. ("Tierra") and Beazer East, Inc. ("Beazer") have paid, incurred or funded on behalf of the Peninsula

Restoration Group ("PRG") at any time after June 1, 2010 for common consulting fees and/or technical services associated with negotiating with EPA on the scope of future RI/FS activities at the Site, exclusive of costs incurred by Tierra or Beazer for their individually retained lawyers and consultants; and

3. all costs that Group Members Tierra and Beazer have paid or incurred on behalf of the PRG at any time after June 1, 2010 for common consulting, design, construction, demolition, remediation, and/or technical services associated with implementation of the IRAW, exclusive of costs incurred by Tierra or Beazer for their individually retained lawyers and consultants.

B. Group Members' Individual Expenses. Notwithstanding anything to the contrary contained elsewhere in this Agreement, Group Members' individual expenses, including individual legal expenses, are excluded from the definition of Shared Costs, and each Group Member shall be responsible for any such expenses it may incur except where the Group has in advance agreed, at a meeting of the Group, to pay for services undertaken by one Group Member on behalf of the Group.

C. Payments by Group Members for Shared Costs.

1. Within thirty (30) days of the Effective Date, the Group may appoint or retain a Treasurer(s) or other entity(ies) (hereinafter, the "Treasurers") to administer and make payments from the Fund to be established at an institution acceptable to the Group. The Fund may be, but is not required to be, an escrow account, and the Treasurer may be, but is not required to be, an escrow agent. Payments to the Fund shall be made in immediately available U.S. currency by direct wire transfer to the Fund, or by check or money order mailed directly to the Treasurer and deposited by the Treasurer into the Fund within five (5) business days after receipt by the Treasurer. The Treasurer shall provide the Group with a quarterly accounting of payments into and expenditures from the Fund, monthly Fund balances, and any such other details as the Group may require. The Treasurer shall receive reimbursement for administrative costs expended by the Treasurer for administration of the Fund.

2. Within thirty (30) days after appointment, the Treasurer shall determine the share of expenses due from Group Member Cooper Industries LLC ("Cooper") to account for Cooper's interim allocable share of those expenditures made by Tierra and Beazer pursuant to Subsections IV.A.2 and IV.A.3 above during time periods prior to execution of this Agreement; upon such determination, the Treasurer shall issue a notice of assessment to Cooper, with supporting documentation, for such amount in accordance with Subsection IV.D below.

3. All invoices to be paid from the Fund for Shared Costs or for services associated with Shared Costs shall, prior to payment, be circulated to each Group Member's designated representative, who shall approve or decline to approve said invoices in accordance with procedures adopted by the Group. No Group Member shall be required to approve or disapprove any invoice for Shared Costs unless said invoice properly documents the Shared Costs purportedly incurred. Once an invoice is approved by enough Group Members to constitute a majority of the voting shares of the Group, the

Treasurer shall make payments from the Fund solely for such approved expenditures.

D. Assessment of Shared Costs. Upon affirmative vote of the Group (and not by a committee of the Group), the Group shall periodically approve assessments to ensure adequate monies are present in the Fund to cover those amounts of Shared Costs that have been approved, but not yet invoiced. Upon approval of any assessment (including the assessment detailed in Subsection IV.C.2 above), the Treasurer shall issue notices of assessment to each Group Member invoicing each Member in an amount equal to that Group Member's portion or share of the approved assessment, as specified in, as applicable, Subsection IV.C.2 above or Subsection IV.E below. All amounts invoiced by a notice of assessment shall be due and payable in full within fifty (50) days after receipt of a notice of assessment and shall be remitted to the Fund in accordance with Subsection IV.C.1 above. If a Group Member fails to pay the amount invoiced in a notice of assessment within fifty (50) days after receipt of such notice of assessment, the Treasurer shall issue a notice of late payment to the Group Member and shall copy all Group Members on such notice of late payment.

E. Interim Allocation. Until such time as the Final Allocation process detailed in Section V below is complete, the following provisions shall apply:

1. The Group Members agree to allocate the Shared Costs and any other costs approved pursuant to this Agreement on an interim basis, prior to completion of the Final Allocation, in accordance with the proportional share of responsibility specified on Exhibit A hereto. The allocated shares of responsibility for Shared Costs specified on Exhibit A shall be interim and shall not reflect an admission of any fact, responsibility or liability of any Group Member in the Final Allocation or in any other matter, proceeding or suit.

2. If, after the Effective Date, the Group Members elect to offer membership in the Group to a new Group Member in accordance with Section VI below, then the existing Group Members shall collectively negotiate the proportional share of responsibility to be assigned to the prospective new Group Member. If said prospective new Group Member elects to join the Group at the negotiated share of responsibility, then, unless all Group Members approve an alternate amendment procedure, Exhibit A shall be amended as follows:

   a. the new Group Member shall be added to Exhibit A;

   b. the agreed proportional share of responsibility to be assigned to said new Group Member shall be added to Exhibit A; and

   c. the proportional share of responsibility assumed by the new Group Member shall offset the existing Group Members' respective proportional shares as follows:

3. The proportional shares of responsibility specified in this Subsection IV.E shall be interim, and shall apply only until conclusion of the Final Allocation process detailed in Section V below.

F. Representation Regarding Ability to Pay. Each Group Member warrants that it presently has sufficient funds to pay its share of all costs and payments required for the Work and by this Agreement.

G. Allocation Not an Admission/Confidentiality. Each Group Member's agreement to the interim allocation set forth in Subsection IV.E above is not intended to, and shall not, constitute an admission or evidence as to any fact, liability, legal theory or argument, or violation of law or regulation, and all Group Members reserve all rights with respect to their respective liability, or lack thereof, for costs or work at the Site.

V. FINAL ALLOCATION

A. Final Allocation. The Group Members agree to engage in a process of determining, finally and forever, their respective liabilities and responsibilities, if any, for the costs of investigating and remediating environmental conditions at or arising from the SCCC Site, and agree to do so in accordance with the provisions of this Section V. This process shall be referred to herein as the "Final Allocation."

B. Timing. The Final Allocation shall not begin until: (a) the earlier of (i) issuance by the USEPA of a Proposed Remedial Action Plan ("PRAP") applicable to the SCCC Site, or (ii) May 1, 2013; or (b) any other date if the Group Members agree on such a date in accordance with this Agreement.

C. Participants. Each Group Member shall participate in the Final Allocation. In addition, within thirty (30) days after the date determined in accordance with Subsection V.B above, the Group Members shall, by letter, collectively invite to participate in the Final Allocation every other person or entity that any Group Member believes may be liable or responsible for environmental conditions at or

arising from the SCCC Site. Any invitee that agrees to participate in the Final Allocation must agree to be bound by all requirements and terms of this Section V. The Group Members, together with any invitee that agrees to participate in the Final Allocation, shall be referred to collectively as the "Participants," and each individually as a "Participant."

D. Final Allocation Process. The Final Allocation shall be a staged process and shall consist of the following components:

1. Starting no later than thirty (30) days after invitations to participate are issued under Subsection V.C above or if no invitations are issued starting no later than the date determined in accordance with Subsection V.B above, the Participants shall engage in an initial period of information sharing. During this period, the Participants shall collectively develop an allocation questionnaire which shall request disclosure of any relevant information that the Participants decide should be disclosed between and among them. At a minimum, the allocation questionnaire shall request that each Participant identify for the other Participants: (a) all costs said Participant is seeking to be allocated in the Final Allocation; (b) the nature of said Participant's operations, ownership, use, or activities at the Site; (c) the identity of persons or witnesses known to the Participant that may have material knowledge or information related to historic operations or environmental conditions at or arising from the Site; (d) a description of any hazardous substances that may have been disposed, deposited, dumped, spilled, released, or otherwise come to be located at the Site during the tenure of said Participants' operations, ownership, use or activities at the Site; (e) each Participant's non-privileged documents related to historic operations and environmental conditions at or arising from the SCCC Site; and (f) any other information the Participants determine is relevant to the Final Allocation. Once the contents of the allocation questionnaire have been resolved, each Participant shall have ninety (90) days (or any other period as may be agreed by the Participants) to complete and distribute the allocation questionnaire to the other Participants. If the Participants cannot reach consensus on any request, question or term of the allocation questionnaire, then the disputed issue shall be resolved by the mediator selected pursuant to Subsection V.D.4 below.

2. No earlier than sixty (60) days after the all completed allocation questionnaires have been distributed, the Participants shall engage in informal negotiation to reach agreement and resolve any disputes concerning: (a) which costs, past and/or future, presented by the Participants will be subject to allocation; and (b) each Participant's respective allocated share of liabilities and costs, past and/or future, for environmental conditions at or arising from the SCCC Site. This informal negotiation shall occur at a time and place mutually agreeable to a majority of the Participants, and each Participant shall have at least one representative with settlement authority in attendance.

3. If the Participants are unable to reach agreement after at least one (1) full business day of informal negotiation pursuant to Subsection V.D.2 above, then the Participants shall engage in a period of information gathering. Each Participant shall make available to the other Participants its non-privileged documents not previously provided in response to the allocation questionnaire and shall, if within the Participant's control, make available for interview or recorded testimony (to be determined by the Participant

requesting such interview or testimony), all witnesses with material knowledge related to historic operations and environmental conditions at or arising from the SCCC Site and any expert witnesses that such Participant intends to rely upon in any mediation under Subsection V.D.4 below . Each Participant shall bear its own costs of copying any other Participant's documents or of interviewing or transcribing the testimony of any other Participant's witnesses, fact or expert, or of any non-party witness. Each Participant shall make available the information, documents and witnesses required herein within sixty (60) days after completion of at least one (1) full business day of informal negotiation that does not result in agreement among all Participants..

4. No earlier than one hundred twenty (120) days after the deadline for disclosing information, documents and witnesses required under Subsection V.D.1 above, the Participants shall engage in mediation to reach consensus on and resolve any disputes concerning: (a) which costs, past and/or future, presented by the Participants will be subject to allocation; and (b) each Participant's respective allocated share of liabilities and costs, past and/or future, for environmental conditions at or arising from the SCCC Site The mediation shall be conducted before an environmental professional with mediation experience acceptable to all Participants; provided, however, if all Participants cannot agree upon a mediator, then the parties shall collectively request that an experienced environmental professional with mediation experience be assigned as mediator by the New York, New York branch of the American Arbitration Association ("AAA") and the professional assigned by AAA shall be the mediator. The mediation shall occur at a time and place mutually agreeable to a majority of the Participants and the mediator. Each Participant shall be entitled to distribute to all Participants and the mediator the following pre-mediation briefings: (a) a primary mediation brief to be distributed at least twenty one (21) days before the mediation; and (b) a reply mediation brief to be distributed at least ten (10) days before the mediation. The mediation shall occur for no longer than three (3) business days. Ability to pay and actual or potential monetary recoveries from insurance, indemnity, or contract shall not be considered in the allocation process.

5. If the Participants cannot achieve a voluntary resolution through mediation, then any Participant may commence a civil action to determine, finally and forever, each person or entity's respective liability and responsibility, if any, for the costs of investigating and remediating environmental conditions at or arising from the SCCC Site. In any such civil action, the undersigned Group Members agree that no litigant shall be held to any higher burden of proof or burden of persuasion than any other litigant.

6. The Participants shall share, on a per capita basis, the costs of the mediator and any facility costs for the location where informal negotiation or mediation occurs; but each Participant shall be responsible for its own legal, technical, expert, travel, and other costs associated with participating in the Final Allocation process. Unless all Group Members agree in writing, no Participant shall present as an expert witness in the Final Allocation Process any consultant, contractor, or other professional retained by the Group to perform any portion of the Work.

E. Costs Subject to Final Allocation.

1. The following costs shall be subject to consideration in the Final Allocation process (provided, however, any Participant may dispute in the Final Allocation process whether such costs should be subject to allocation and/or recovery):

   a. All Shared Costs under this Agreement.

   b. All costs incurred by any Participant prior to execution of this Agreement, if such costs would be recoverable as a result of environmental conditions at or arising from the SCCC Site: (i) as response costs in a cost recovery or contribution lawsuit initiated by a private party under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 *et seq.*; or (ii) in a lawsuit initiated by a private party pursuant to the New Jersey Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 *et seq.*

   c. All costs incurred by any Participant to comply with the requirements of the October 1989 Administrative Consent Order ("1989 ACO") executed by Standard Chlorine Chemical Company, Inc. and the NJDEP, including the costs of any investigations, analysis, disposals, remedial or removal actions, financial assurances, or other obligations imposed or required by NJDEP purportedly arising under the 1989 ACO.

   d. All costs incurred by any Participant to comply with the requirements of Administrative Settlement Agreement and Order on Consent for Removal Action, Index No. CERCLA 02-2010-2012 ("2010 Removal Action Order") executed by Standard Chlorine Chemical Company, Inc., Beazer and the EPA, including the costs of any investigations, analysis, disposals, remedial or removal actions, financial assurances, or other obligations imposed or required by EPA purportedly arising under the 2010 Removal Action Order.

   e. All costs incurred by any Participant to secure access at the SCCC Site to implement any investigations or remedial actions associated with environmental conditions at or arising from the SCCC Site.

   f. All future costs to be incurred as a result of environmental conditions at the SCCC Site that would be recoverable by a private party under CERCLA or the Spill Act.

2. The following costs shall not be subject to consideration in the Final Allocation process, shall not be allocated among the Participants in the Final Allocation process, and shall not be subject to final resolution under this Section V:

a. Any costs or damages associated with or characterized as injury to, destruction of, or loss of natural resources, including costs of assessing such injury, destruction, or loss under CERCLA.

b. Any damages for or associated with the loss of use of natural resources recoverable under the Spill Act.

c. Except for those costs directly related to the IRAW, required by and in accordance with the AOC, or associated with development and implementation of the River Study Investigation Workplan submitted to NJDEP in December 2005 and follow-up activities, any costs relating to or associated with the presence of contamination in any portion of the Hackensack River not immediately adjacent to the following portions of the SCCC Site: Lots 49, 52 and 52.01 (a/k/a 52R) on Block 287 of the Tax Map of the Town of Kearny, Hudson County, New Jersey, unless undertaken upon the unanimous consent of all Group Members.

F. Orphan Shares. The issue of the proper method for allocation among the Participants of any responsibility attributable to a defunct, unavailable or non-viable responsible party shall be resolved in the Final Allocation process.

G. Final Allocation Adjustment Payments. After the Final Allocation process achieves an agreed or mediated resolution of each Participant's respective share of the liabilities and responsibilities for environmental conditions at or arising from the SCCC Site, each Participant who has been allocated a final share greater in value than the amount it has paid in the past (including both amounts paid prior to execution of this Agreement and paid pursuant to the Interim Shares assessed under this Agreement) shall be assessed an incremental amount equal to the difference between what the Participant did pay in the past and what it would have paid in the past if its final share had been applied to such past Site expenditures. Similarly, each Participant who has been allocated a final share lower in value than the amount it has paid in the past shall receive a payment equal to the difference between what the Participant did pay in the past and what it would have paid in the past if its final share had been applied to such past Site expenditures.

H. Reservation of All Rights against Non-Participants. The Participants shall reserve all, and waive no, rights to pursue, claim or initiate suit or action against any person or entity that fails, refuses, or is not invited to participate in the Final Allocation process, whether for contribution, cost recovery, indemnity, or other method or legal theory of recovery of any and all costs or damages incurred or to be incurred relating to environmental conditions at or arising from the SCCC Site, whether arising under federal, state or common law.

I. Reservation of All Rights regarding Costs Not Subject to Final Allocation. The Participants shall reserve all, and waive no, rights to pursue, claim or initiate suit or action against any person or entity for contribution, cost recovery or indemnity of the following costs incurred or to be incurred relating to environmental conditions at or arising from the SCCC Site, whether arising under federal, state or common law: any costs or damages specifically excluded from the Final Allocation under Subsection V.E.2 above.

VI. NEW GROUP MEMBERS

The Group may approve the entry of new Group Members after the Effective Date of this Agreement. A new Group Member shall become a Group Member by execution of this Agreement and be deemed a Group Member *ab initio*, and shall be assessed and pay all sums which such new Group Member would have been obligated to pay as a Group Member had that Group Member joined as of the Effective Date, except that the Group, solely by unanimous vote, may impose different terms and conditions upon any entity or individual seeking to join the Group after the Effective Date. By execution of this Agreement, any new Group Member ratifies and adopts decisions made by the Group prior to its execution of the Agreement. Upon any new Group Member's joining the Group, the interim allocation shall be adjusted consistent with Subsection IV.E.2 above.

VII. CONFIDENTIALITY & USE OF INFORMATION

A. Recognition of Common Interests. The Group Members expressly recognize that they have aligned and common interests, claims and defenses with respect to the Site, the IRAW, the AOC, the Work, and other entities or persons who may be responsible or legally liable for environmental conditions at or arising from the SCCC Site. The Group Members also expressly recognize and agree that it is in their collective, mutual, and individual interests to proceed jointly with respect to such interests, claims and defenses and to, from time to time (including prior to the execution of this Agreement), share, disclose and transmit among and between themselves such information, documents, theories, opinions, work product, or other materials or communications that they may deem necessary to their aligned and common interests, claims and defenses. In doing so, the Group Members intend and desire to maintain, to the maximum extent permitted by applicable law, any and all claims of confidentiality, privilege, immunity, or other protection from disclosure that may inure to such shared, disclosed or transmitted information, documents, theories, opinions, work product, or other materials or communications.

B. Shared Information. From time to time, the Group may elect to disclose or transmit to its Group Members, or the Group Members may elect to disclose or transmit to each other, such information as the Group, such Group Member(s), or the technical consultant(s) and/or contractor(s) retained by the Group, deem appropriate for the sole and limited purpose of conducting activities that are necessary and proper to carry out the purposes of this Agreement, including as may be disclosed, transmitted or recorded in the conduct of the Final Allocation (hereinafter referred to as "Shared Information"). Shared Information may be disclosed or transferred orally or in writing or by any other appropriate means of communication.

C. Preservation of Privileges, Joint Defense Privilege. All information and/or documents prepared on behalf of the Group or exchanged among the Group Members shall be communicated for the limited purpose of assisting in their common interests, claims and defenses and such exchange shall not constitute a waiver of any attorney-client, work product, trade secret, or other applicable privileges or immunities. All such information and documents shall be marked "Confidential", "Privileged" or with words of similar import, provided however, any Group Member may later declare a document not initially so marked, as confidential. Shared Information disclosed by the Group Members to Common Counsel, if any, may be disclosed to any other Group Member, and each Group Member hereby expressly consents to treat such disclosure to it as being for the sole purpose of asserting any common interests, claims or defenses arising out of the Work or the

Site. Such disclosure shall not be deemed a waiver of the attorney-client privilege or work product doctrine or any other applicable privilege or immunity.

D. Confidentiality of Shared Information.

1. Each Group Member agrees that all Shared Information marked as confidential received from the Group, from any other Group Member or its counsel, or from a technical consultant or contractor retained by the Group, shall be held in strict confidence by the receiving Group Member and by all persons to whom such Shared Information is revealed by the receiving Group Member, pursuant to this Agreement, and that such Shared Information shall be used only in connection with asserting any common claims or defenses in connection with the Site and conducting such other activities that are necessary and proper to carry out the purposes of this Agreement.

2. Shared Information that is exchanged in written or in document form and is intended to be kept confidential may, but need not, be marked "Confidential", "Privileged" or with words of similar import, provided however, any Group Member may later declare a document not initially so marked, as confidential. If such information becomes the subject of an administrative or judicial order requiring disclosure of such Shared Information by a Group Member, the Group Member may satisfy its confidentiality obligations hereunder by notifying the Group Member(s) that generated or disseminated the Shared Information and by affording such Group Member(s) an opportunity to protect the confidentiality of the Shared Information or, if the Shared Information was generated by Common Counsel or a technical consultant or contractor, by giving notice to the chairperson of the Group, to Common Counsel or to the chairperson of the Technical Committee, as the case may be, and affording the Group the opportunity to protect the confidentiality of the Shared Information.

3. Each Group Member shall take all necessary and appropriate measures to ensure that any person who is granted access to any Shared Information marked as confidential or who participates in work on common projects or who otherwise assists any Common Counsel or technical consultant or contractor in connection with this Agreement, is familiar with the terms of this Agreement and complies with such terms as they relate to the duties of such person.

4. The Group Members intend by this Section VII to protect from disclosure all information and documents marked as confidential shared by the Group with its Group Members, among any Group Members or between any Group Member and Common Counsel or any technical consultant or contractor retained by the Group to the greatest extent permitted by law, regardless of whether the sharing occurred before execution of this Agreement and regardless of whether the writing or document is marked "Confidential."

5. The confidentiality obligations of the Group Members under this Section VII shall remain in full force and effect, without regard to whether this Agreement is terminated or whether any action arising out of or relating to the Site is terminated by final judgment or settlement. The provisions of this Section VII shall not apply to Shared Information which is now or hereafter becomes public knowledge without violation of this Agreement.

6. In the event any Shared Information marked as confidential shall be sought, or is purported to be sought, under color of legal process by any non-Group entity or individual, the Group Member receiving such process or request shall give immediate telephone notice thereof to the Group, and, to the extent determinable, to the Group Members whose Shared Information is sought to be disclosed, followed by immediate written notice by overnight delivery, facsimile transmission or other similarly expeditious means.

7. Upon termination of this Agreement, any documents or other physical materials containing Shared Information marked as confidential provided by a Group Member to Common Counsel, to other Group Members, or to any consultant or contractor retained by or on behalf of the Group Members, shall be promptly destroyed or returned to such Group Member together will all copies thereof; and all Group Members shall remain obligated to preserve the confidentiality of all Shared Information received or disclosed pursuant to this Agreement.

VIII. NO ADMISSIONS, DENIAL OF LIABILITY, TOLLING

A. No Admissions. This Agreement is a settlement agreement and shall not constitute, be interpreted, be construed or be used as evidence of any fact, liability, legal theory, argument or violation of law, as a waiver of any right or defense or as an estoppel against any Group Member or an admission of liability, law or fact, either by Group Members among themselves or by any person not a Group Member. The fact or extent of the Interim Allocation established pursuant to Subsection IV.E above shall not be admissible, and the Group Members do not consent to its use, admission or disclosure, to prove any Group Member's responsibility in any future suit, claim or proceeding (including, without limitation, the Final Allocation) regarding allocation of liability for environmental conditions at or arising from the SCCC Site.

B. Denial of Liability. Each Group Member expressly denies its liability for environmental conditions at or arising from the SCCC Site. This Agreement is a settlement agreement that reflects a legal compromise and any Group Member's agreement herein to share a portion of Shared Costs is not, and shall not be used as, an admission of any liability by said Group Member.

C. Tolling. The Group Members agree that the period of time between the Effective Date and the completion of the Final Allocation shall not be included in any computations made for statute of limitations, statute of repose, laches, or any other equitable defense based on the passage of time in any suit, claim or proceeding relating to recovery of costs associated with, contribution for or allocation of liability for environmental conditions at or arising from the SCCC Site.

D. Standstill. The Group Members agree that from the Effective date until the completion of mediation under Subsection V.D.4 above, no Group Member shall initiate suit in any judicial forum against any other Group Member seeking allocation of any past, present or future costs or expenses arising out of environmental conditions at or arising from the SCCC Site or seeking a determination of liability or responsibility for environmental conditions at or arising from the SCCC Site (the "Standstill"), regardless of the legal theory, claim or cause of action asserted. The foregoing Standstill shall not apply to bar third-party claims, cross-claims or any other claim by a Group Member against another Group Member if a civil suit seeking a determination of liability or responsibility for environmental conditions at

or arising from the SCCC Site is initiated against one or more Group Members by a person or entity not a Party to this Agreement.

E. No Effect on Enforcement of Agreement. For avoidance of doubt, nothing in this Section VIII is intended or should be construed to limit, bar, or otherwise impede the enforcement of any term or condition of this Agreement against any Group Member.

IX. MISCELLANEOUS

A. Successor and Assigns. This Agreement shall be binding upon the successors and assigns of the Group Members, including legal entities that are successors to the assets and liabilities associated with less than all of a Group Member's businesses. Such entities shall, to the same extent as a Group Member, derive any legal benefits flowing herefrom. No assignment or delegation of the obligation to make any payment or reimbursement hereunder will release the assigning Group Member without the prior written consent of the Group.

B. Default. A Group Member that has failed to pay an amount of Shared Costs invoiced by a notice of assessment within thirty (30) days of receipt of a notice of late payment from the Treasurer shall be deemed to be in default. The unpaid balance of any defaulting Group Member's share of Shared Costs may be assessed by the Group against the other Group Members hereto (without waiving any rights such Group Members may have against the defaulting Group Member or its successors or assigns) in the same proportion as the other Group Members would have been obligated to pay if the defaulting Group Member had not been a signatory of this Agreement. Any Group Member deemed to be in default shall lose the right to exercise its voting power as provided in Subsection II.C.2 above, shall forfeit any seats on any committees, and shall be liable for any unpaid share of Shared Costs. A Group Member in default shall regain its rights as a Group Member, including its voting power and committee seats, upon payment of the unpaid balance of Shared Costs, plus interest. The Group, or any non-defaulting Group Member, may commence an action against a Group Member deemed to be in default: (1) to enforce this Agreement and recover the unpaid share of Shared Costs and enforce any other remedy available for breach of this Agreement; and/or (2) for response cost recovery or contribution under any federal, state or other statutory or common law theory. If the Group successfully enforces this Agreement against a defaulting Group Member, such Group Member shall be liable to pay the Group's costs and attorneys' fees incurred in such enforcement action.

C. Relationship of Group Members.

1. No Group Member, or representative or counsel for any Group Member, has acted as counsel for any other Group Member with respect to such Group Member's entering into this Agreement, except as expressly engaged by such Group Member with respect to this Agreement, and each Group Member represents that it has sought and obtained any appropriate legal advice it deems necessary prior to entering into this Agreement.

2. No Group Member or its representative serving on any Committee shall act or be deemed to act as legal counsel or a representative of any other Group Member, unless expressly retained by such Group Member for such purpose, and, except for such express retention, no attorney/client relationship is intended to be created between representatives on any Committee and the Group Members.

3. Nothing herein shall be deemed to create a partnership or joint venture and/or principal and agent relationship by or among the Group Members.

D. Indemnification. No Group Member or its representative(s) serving as a committee chairperson, as Treasurer, or on any committee shall be liable for, and the Group shall indemnify such Group Member or representative against, any claim, demand, liability, cost, expense, legal fee, penalty, loss or judgment (collectively "liability") to the extent it relates to the good-faith performance of any duties under this Agreement by any Group Member or its representative(s) on behalf of any committee or the Group, including, but not limited to, any liability arising from any contract or agreement signed by the Group Member or its representative(s) at the request of the Group. This indemnification shall not apply to any liability or costs arising from a criminal proceeding unless such Group Member or its representative(s) had reasonable cause to believe that the conduct in question was lawful. Payments under this Subsection IX.D shall be a Shared Cost and shall be allocated among each Group Member, regardless of whether the Group Member was a member of the Group at the time of the action, judgment or other circumstance giving rise to the obligation for indemnity. The terms of this Subsection IX.D shall survive the termination of this Agreement.

E. Amendments. This Agreement may be amended only by the affirmative vote of all eligible Group Members not then in default. Any such vote shall be taken at a Group meeting called for the purpose of considering the amendment, and the written language of any such amendment to this Agreement shall have been distributed to all Group Members in advance of any such vote. Provided, however, no amendment shall limit the effect of Subsection IX.D (Indemnification) above with respect to acts or omissions taken or made prior to such amendment, or of Section VII .(Confidentiality & Use of Information) above.

F. Severability. If any provision of this Agreement is deemed invalid or unenforceable, it shall be modified or interpreted so as to achieve its objective to the maximum extent possible, failing which, it shall not be deemed to be part of this Agreement, and the balance of this Agreement shall remain in full force and effect.

G. Conflicts of Law. This Agreement shall be interpreted under the laws of the State of New Jersey without regard to its conflicts of law provisions.

H. Nonwaiver. Except as and to the extent specifically provided in this Agreement, nothing in this Agreement shall be construed to waive any rights, claims or privileges, which any Group Member shall have against any other Group Member or any other person or entity.

I. Reservation of Rights against non-Group Members. Each Group Member reserves all, and waives no, rights to pursue, claim or initiate suit or action, whether for contribution, cost recovery, indemnity, or other method or legal theory of recovery, against any person or entity that is not a Group Member, for any and all costs or damages incurred or to be incurred relating to environmental conditions at or arising from the SCCC Site, whether arising under federal, state or common law.

J. Insurance. The Group Members do not intend hereby to prejudice any Group Member with respect to its insurers and, by entering into this Agreement, the Group Members anticipate that the actions taken pursuant to this Agreement will benefit such insurers. If any insurers make any claims that any aspect of this Agreement provides a basis for rejection or limitation of insurance coverage for a Group

Member, the Group will attempt, consistent with the objectives of this Agreement, to return such Group Member to a position that is satisfactory to its insurers.

K. Entire Agreement. This Agreement constitutes the entire understanding of the Group Members with respect to its subject matter.

L. Termination and Withdrawal. This Agreement is established to implement the requirements of the AOC and the IRAW, and it may not be terminated and no Group Member may withdraw from this Agreement unless and until both of the following circumstances have occurred: (i) all obligations arising under or on account of the AOC have been fully paid, satisfied and discharged, and the EPA has given notice thereof; and (ii) the Final Allocation has been completed pursuant to Section V above. Following the occurrence of these events, any Group Member that has paid in full its allocated share may withdraw at any time from this Agreement. Alternatively, this Agreement may be terminated at any time by a unanimous vote of the eligible Group Members not in default at the time of said vote. If this Agreement is terminated in accordance with this Subsection IX.L, then the following provisions of this Agreement shall survive such termination and shall continue to be enforceable against each Group Member: Section VII (Confidentiality & Use of Information); and Subsection IX.D (Indemnification).

M. Notice. All notices, bills, invoices, reports and other communications with or to a Group Member shall be sent to the representative designated by the Group Member on said Group Member's signature page of this Agreement. Each Group Member shall have the right to change its representative upon ten (10) days written notice to the other Group Members.

N. Agreement as to Access. The Group Members who own property either within the SCCC Site or adjacent to the SCCC Site, and any Group Members who may have access rights to perform Work at the Site, agree to, and do hereby, grant reasonable access to the property to each Group Member and any consultants and contractors retained by the Group to perform the Work. The Group Members who have rights of access to any portion of the SCCC Site agree to undertake commercially reasonable efforts to ensure that each Group Member and any consultants and contractors retained by the Group are entitled to access necessary to perform the Work. Each Group Member, or the Group for any consultant or contractor, as the case may be, shall provide prior notice of its requested access and shall not unreasonably interfere with the operations of the Group Member providing or facilitating such access. This Agreement also shall permit access to the SCCC Site by representatives and contractors of governmental agencies that may be monitoring the investigation or remediation of the SCCC Site.

O. Due Authority. Each person signing this Agreement below represents and warrants that he or she has been duly authorized to enter into this Agreement by the company or entity on whose behalf it is indicated that the person is signing.

P. Method of Execution; Counterparts. This Agreement, and any amendments hereto, may be executed in separate and multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.